Crl.A. 268/2002
BEFORE
THE HON'BLE MR JUSTICE P.G. AGARWAL
THE HON'BLE SMT. JUSTICE A. HAZARIKA

Agarwal, J

This appeal is directed against the judgment and order dated 20.06.2002 passed by the learned Sessions Judge, Dhubri in Sessions Case No.39/2000 under Section 457/302 IPC convicting the accused- appellant, Kuddas Ali to suffer imprisonment for life and to pay a fine of Rs.1000-/, in default, further rigorous imprisonment for one year.

2. On 12.01.2000 at 5 A.M., Md. Nur Hussain (PW-6) lodged an FIR (Ext-2) before the police to the effect that on the previous night around 11 P.M., the accused Kuddas Ali entered into the dwelling house of Nur Mohammad by cutting doors and thereafter, stabbed Nur Mohammad on his chest with a dagger and killed him. The accused appellant was recognized by Pinjira Bibi (PW-1), wife of the deceased. On receipt of the information, police came to the place of occurrence and found large numbers of persons assembled at the place of occurrence i.e., the residence of the deceased. Deceased was found lying dead in the house and a dagger about 11 inches long was also found near the dead body. The dagger was seized vide seizure list Ext-3. Police held inquest over the dead body and found injury on the left side of the chest caused by sharp weapon. The post mortem was conducted by Dr. Khokan Kr. Choudhury (PW-11), who found as follows:

> Rigor mortis present.
> Eyes and mouth were closed. An oblique sharp cutting wound of size 2 x 1 present in the left 6th inter-costal space. The injury was perforating to the thoraco abdominal cavity.
> On dissection: That injury perforated through the left lobe of the liver and huge amount of blood and blood clot are present in the abdominal cavity. The left lung was also injured and haemothorax was present. On dissection of the heart 4 chambers of the heart were found empty. The cut injury perforated through the left pleurai, left lower lobe of the lung, left lobe of the liver through the diaphragm. There was huge haemothorax and haemopertoneum were present. The death was, in my opinion, was due to shock and haemorrhage as a result of the perforating injury sustained by the deceased.

3. So far the death of the deceased as a result of the stab injury is concerned, there is evidence of the wife of the deceased, Pinjira Bibi (PW-1) and evidence of seven other witnesses, PW-2 to PW-8, who came to the place of occurrence and saw Nur Mohammad lying dead in the house with injury on the chest. They have also deposed about the recovery of the weapon lying near the dead body and also holding of the inquest by the police. In view of the overwhelming oral and medical evidence on record, we concur with the finding of the trial Court that Nur Mohammad died as a result of homicidal death.

4. Pinjira Bibi (PW-1) is the eye witness and she has deposed that on the night of occurrence, she was sleeping with her husband and her three minor children were also on the same bed. On hearing the shout of her husband, she got up and saw the accused Kuddas Ali leaving their house. She also raised alarm whereupon the neighbours came and saw her husband lying dead. She reported them that it was her brother-in-law, Kuddas, who had killed her husband. She also saw the dagger lying on the bed near her husband's body. Accuse-appellant, Kuddas had a closed relationship with PW-1 as he had married the step sister of PW-1. So far the motive of kill is concerned, according to PW-1 her husband borrowed a sum of Rs.250/-. The accused had demanded the money on the previous day but her husband could not repay the same and promised to pay later on.

5. We find that there is oral dying declaration of the deceased naming the accused-appellant as the assailant and it is corroborated by the evidence of PW-1, who although did not see the actual assault but see the accused at that point of time inside her house and saw the accused running away from her house. The name of the accused-appellant was immediately reported to all the neighbours. It was mentioned that there were about 15/20 families living in the same campus and all of them came running and they were reported the name of the accused-appellant as the assailant. The FIR in the present case was lodged within 5-6 hours, although the police station is situated at a distance of 30 km. In the FIR also the name of the accused-appellant has been specifically mentioned as the assailant.

6. The learned counsel for the appellant has submitted that the solitary evidence of the eyewitness PW-1 cannot be accepted and conviction cannot be based on such evidence. The learned counsel has placed reliance on the decision of the Apex Court in the case of Panda Nana Kare vs. State of Maharashtra, AIR 1979 SC 697. In the above case, we find that the solitary evidence did not disclose the name of the assailant immediately after the incident and hence, the testimony of the eyewitness was not recorded by the Apex Court as the identity of the accused was disclosed at the belated stage and the conviction can not be based on the evidence of such witness. The facts of the present case are quite different. The name of the accused-appellant was immediately reported to all the witnesses, who arrived on hearing the shout of PW-1 and it was specifically mentioned in the FIR lodged immediately after the incident. The ratio of law laid down in the case of Panda Nana Kare (supra) is not applicable.

7. The learned counsel for the appellant has also drawn the attention of this Court to the decision of the Apex Court in the case of Ram Narain vs. State of Punjab, AIR 1975 SC 1727, wherein it was held that if the evidence of the witnesses is totally inconsistent with the medical evidence on record and unless this has been explained, the prosecution case cannot be accepted. In the present case, we hardly find any inconsistency between the oral and medical evidence on record. All the witnesses have stated that they saw the stab injury on the chest. It was also disclosed in the inquest report and the doctor also stated that there was a cut injury perforating through the left lung and left side of the liver. Thus we find that the medical evidence fully corroborates the testimony of the eyewitness.

9. In the present case, we find that the wife of the deceased immediately reported the name of the assailant to the persons, who came running at the night on hearing her shout. As stated above, the accused-appellant has closed relation, defence did not suggest animus on the part of the eyewitness with the accused in her statement under Section 313 Cr.P.C. and there is no reason on the part of Pinjira Bibi, the wife of the deceased, to falsely implicate him. So far the relationship is concerned, the accused had admitted the same that he had married the step sister of PW-1. As the accused was the known faced, the recognisation is also not doubtful.

10. Hence, relying on the testimony of PW-1, we hold that it was the accused-appellant and no one else who killed the deceased. Considering the facts and circumstances of the case, the intention to cause death is writ large and as such, the conviction and sentence under Section 302 IPC needs no interference.

11. The appeal has no merit and accordingly it stands dismissed.

12. Send down the records.